

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PAUL A.X. WALSH, ST. THOMAS MORE CHURCH,
POPE FRANCIS, and THE CATHOLIC LEAGUE

Case No.:1:23-cv-914 (MKV)

Plaintiff,

v.

PLANNED PARENTHOOD INTERNATIONAL,
ACLU, NOW, and NARAL,

Defendants.

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**PLANNED PARENTHOOD FEDERATION OF AMERICA, INC. AND
PLANNED PARENTHOOD GLOBAL, INC.'S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, AND
OPPOSITION TO MOTION FOR DEFAULT JUDGMENT [ECF10]**

LEWIS, BRISBOIS, BISGAARD, & SMITH, LLP
By: /s/ Kenneth Fox
Kenneth Fox (KF-9135)
Attorneys for Defendants
77 Water Street
Suite 2100
New York, New York 10005
(212) 600-3705

ken.fox@lewisbrisbois.com

*Counsel to Defendants Planned Parenthood
Federation of America, Inc. and Planned
Parenthood Global, Inc.*

To (via ECF): Paul A.X. Walsh

Pursuant to Federal Rule of Civil Procedure 12(b)(6) and this Court’s August 8, 2023 Scheduling Order (ECF 7), and in an abundance of caution, Planned Parenthood Federation of America, Inc. (“PPFA”) and Planned Parenthood Global, Inc. (“PPG”) respectfully request that the Amended Complaint (ECF 3) in this action be dismissed insofar as it could be construed to pertain to either of them. On its face, the Amended Complaint fails to state a claim upon which relief could be granted.

A. Factual Background

1. Pro se plaintiff Paul A.X. Walsh filed suit on February 3, 2023 on behalf of himself and—purportedly—Pope Francis, Cardinal Dolan, former President Trump, the Trump family, numerous religious institutions, and “all Citizens of the United States of America,” among others. *See* ECF 1 at 8. On February 14, Mr. Walsh filed the Amended Complaint, this time purportedly on behalf of himself and “Class Action Plaintiffs” Pope Francis, St. Thomas More Church (“of which I am a Founding Member and its Leader”), and the Catholic League (“of which I am a donor”). *See* ECF 3 at 1. The four sentence Amended Complaint asserts that “Abortion is Unconstitutional,” but does not include any factual allegations whatsoever. *Id.* On July 21, 2023, Mr. Walsh filed an Affidavit of Service purporting to confirm service on “Planned Parenthood International” at the New York business address of PPFA and PPG. *See* ECF 5.¹

2. On July 27, 2023 PPFA and PPG filed a pre-motion letter seeking leave to file a motion to dismiss. *See* ECF 6. On August 8, 2023, the Court granted the requested leave and *sua sponte* granted Plaintiff leave to file a second amended complaint no later than September 8, 2023. *See* ECF 7 at 1.

¹ There is no such entity as “Planned Parenthood International” at that address. Neither PPFA, PPG nor any of their subsidiaries does business under that name.

Plaintiff is on notice that this will be his last opportunity to amend his pleading [to] remedy any deficiencies raised in Planned Parenthood's pre-motion letter. Plaintiff is also on notice that he must allege facts that establish his standing to sue, which means he must allege facts showing that (1) he personally suffered an injury, (2) which is traceable to conduct by the defendants and (3) which this Court can redress.

Id. (original emphasis).

3. Plaintiff did not file a second amended complaint.²

4. Instead, on September 1, 2023, Plaintiff filed a handwritten "Reply to defendants [sic] Motion to Dismiss," which is reproduced in full for the Court's convenience:

The defendants [sic] motion to dismiss is defective on its face because I [sic] defendant [sic] was never serv[illegible] therefore it is premature because defendant [sic] must first file its Answer and Answer my Inter[illegible]tories[,] both of which it has failed to do[.] I believe severe sanctions against defendant are in order. Lastly the questions [illegible] be refered [sic] to the United States Supreme Court because I will appeal if my lawsuit is dismissed[.]

ECF 9.

5. On September 6, 2023, Plaintiff followed up with a handwritten, unsigned "Motion for Default Judgment," which states in full:

Pursuant to Rule 12 of the Federal Rules of Civil Procedure.

Defendant Planned Parenthood was served June 20, 2023 and has not filed an Answer or has not served me with their Answer. Under Rule 12 I request a default judgment[.]

ECF 10.

² Nor did Plaintiff file notices of service as to defendants the ACLU, the National Abortion Rights Action League, or the National Organization of Woman by August 25, 2023 as directed by the Court's Scheduling Order. See ECF 7 at 2.

B. Plaintiff's Complaint Should Be Dismissed With Prejudice

6. Plaintiff's procedural objections in ECF 9 are not well taken. If a Rule 12 motion is filed, no answer is due until 14 days after the motion is denied, *see Fed. R. Civ. P. 12(a)(4)*, and discovery not permitted prior to a Rule 26(f) conference (which has not happened in this case), *see Fed. R. Civ. P. 26(b)(1)*. There can be no basis for a default judgment, not least because – in response to PPFA and PPG's pre-motion letter – the Court has already set a schedule for the motion to dismiss. *See ECF 7; J. Vyskocil, Individual Rules of Practice in Civil Cases, Rule 4(a)(i)* ("[S]ubmission of a pre-motion letter concerning a motion to dismiss will stay a defendant's time to answer or otherwise move with respect to the Complaint.").

7. The Amended Complaint is facially defective. A viable complaint must contain, among other things, "a short and plain statement of the claim showing that the pleader is entitled to relief." *Fed. R. Civ. P. 8(a)(2)*. Although a complaint's factual allegations need not be detailed, they must "state a claim to relief that is plausible on its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) and be sufficient to "raise a right to relief above the speculative level," *id.* at 555. Pro se complaints are construed liberally, but still must allege facts sufficient to support the claims advanced. *See, e.g., Felder v. U.S. Tennis Ass'n*, 27 F.4th 834, 841 (2d Cir. 2022). Because the Amended Complaint fails to make any factual allegations at all, much less sufficient to state a plausible claim for relief, it should be dismissed.

8. Because Plaintiff has already been given ample opportunity to try to remedy the deficiencies of the Amended Complaint, and clear warning that failure to do so will result in dismissal, PPFA and PPG respectfully request that the case be dismissed with prejudice.

Dated: New York, New York
September 27, 2023

Respectfully submitted,

Lewis, Brisbois, Bisgaard & Smith,
LLP
77 Water Street, Suite 2100
New York, NY 10005

By: /s/ Kenneth Fox
Kenneth Fox (KF9135)